

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-4018

United States of America,

Appellee,

v.

Jose M. Lopez,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.
[Unpublished]

Submitted: June 11, 2003

Filed: June 18, 2003

Before MORRIS SHEPPARD ARNOLD, MURPHY, and BYE, Circuit Judges.

PER CURIAM.

Jose Lopez pleaded guilty to possessing with intent to distribute 100 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1). The district court¹ sentenced him to 70 months imprisonment and 5 years supervised release. Counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that Lopez's sentence is longer than necessary to rehabilitate him and to protect society, particularly because he has no prior felony convictions.

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

To the extent that Lopez is arguing that his sentence is disproportionate to his crime, this argument does not succeed. Cf. Ewing v. California, 123 S. Ct. 1179, 1186-87 (2003) (Eighth Amendment does not require strict proportionality between crime and sentence). Further, a more general challenge to the harshness of his sentence is likewise unavailing, because his 70-month sentence is within--and, in fact, is at the bottom of--a Guidelines range that he specifically elected not to challenge at sentencing and that he does not challenge on appeal. Cf. United States v. Woodrum, 959 F.2d 100, 101 (8th Cir. 1992) (per curiam) (sentence is not reviewable merely because it is at top of properly calculated sentencing range).

Having conducted an independent review under Penon v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we affirm, and we grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.